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JUN 20 1966
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1989~~ 158

ANTHONY VENTERELLA, JOSEPH BELLAVIA, WILLIE GUIDRY, INDIVIDUALLY AND AS PROPRIETORS OF THE SUDAN OYSTER CO. AND EMILE BOUVIER, JR.,

Petitioners,

versus

REUBEN C. PACE d/b/a PACE MARINE SERVICE, J. RAY McDERMOTT AND CO., INC., THE TRAVELERS INSURANCE COMPANY, NATIONAL AUTOMOBILE AND CASUALTY INSURANCE CO. and CERTAIN UNDERWRITERS OF LLOYDS LONDON,

Respondents.

JOINT BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 1339

ANTHONY VENTERELLA, JOSEPH BELLAVIA, WILLIE GUIDRY, INDIVIDUALLY AND AS PROPRIETORS OF THE SUDAN OYSTER CO. AND EMILE BOUVIER, JR.,

Petitioners,

versus

REUBEN C. PACE d/b/a PACE MARINE SERVICE, J. RAY McDERMOTT AND CO., INC., THE TRAVELERS INSURANCE COMPANY, NATIONAL AUTOMOBILE AND CASUALTY INSURANCE CO. and CERTAIN UNDERWRITERS OF LLOYDS LONDON,

Respondents.

JOINT BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Contending that certain Louisiana statutes, or the interpretation of those laws by the appellate courts of the state, are in conflict with the Constitution of the United States, and further urging that the United States District Court for the Eastern District of Louisiana in a suit grounded upon diversity of citizenship of the parties is nonetheless "a court of

competent jurisdiction" absent complete diversity, petitioners seek a writ of certiorari in this cause.

The opinion of the Court of Appeal for the Fourth Circuit, State of Louisiana, set forth in the appendix to petitioners' brief, makes it abundantly clear that dismissal of the action was in accordance with and as required by the Louisiana law relating to the interruption of prescription. Thus, as the Court of Appeal pointed out, when the alleged cause of action accrued, the Revised Statutes and the Civil Code of Louisiana then unequivocally provided that the filing of suit interrupts prescription only when the action is lodged in a court of competent jurisdiction, and failing jurisdictional competency, actual service of citation is required. The subsequent passage of Act 31 of 1960 did not—as petitioners erroneously would suggest—effect any change in the substantive law, for the Act simply restated that which had existed before. Notwithstanding this, and even construing Act 31 of 1960 as modifying the prior law, petitioners are constrained to and do admit "that laws relating to prescription may be considered as matters of procedure which are remedial in nature" and "may be given retrospective effect."

In addressing themselves to the jurisdictional competency of the United States District Court for the Eastern District of Louisiana, petitioners undertake to seek review of that court's finding that it lacked jurisdiction of the action. The dismissal as to all parties was granted on the motion of one of the "for-

eign" defendants, and while petitioners sought not to resuscitate the cause in the United States District Court, thereby allowing the dismissal to become final, they urged to the courts of the State of Louisiana, and now urge to this Honorable Court, that the United States District Court was one having jurisdiction of the action.

It is evident that petitioners acknowledge that complete diversity of citizenship between parties plaintiff and defendant is required, and that the suit in the United States District Court as it was filed, allowed to pend, to be dismissed, and finally terminated, was one not fulfilling this jurisdictional requirement. But petitioners would have this Honorable Court "take judicial notice" of what "could have been" and suggest that because of certain unexplored avenues which allegedly were open to them to maintain the action in the United States District Court, a jurisdictional competency existed. The time of filing of petitioners' suit, the forum in which relief was sought, the parties [illegible]ined, and the finality of its correct dismissal were all of petitioners' doing. It is submitted that they cannot now be heard to say that in retrospect what "could have been" renders meaningless that which was done, that the United States District Court was "a court of competent jurisdiction" despite that court's proper holding to the contrary, and that the filing of the suit in that court, without timely service of citation, interrupted prescription.

It is respectfully submitted that the decisions of the courts below were entirely proper and that the Louisiana statutes, as interpreted, were not in conflict with the Constitution of the United States. Respondents therefore suggest that there is no basis for the granting of the writ and that certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, Benjamin W. Yancey, a member of the bar of this Court, do hereby certify that copies of the foregoing brief have been served upon petitioners by mailing same to their counsel of record, Messrs. Peltier & Peltier, Thibodaux, Louisiana, Messrs. Robert U. Blum and Charles F. Seemann, 311 Baronne Street, New Orleans, Louisiana, and Thomas Barr, III, Esq., 636 National Bank of Commerce Building, New Orleans, Louisiana, first-class mail, postage prepaid at New Orleans, Louisiana, this ..... day of June, 1966.

.....

BENJAMIN W. YANCEY